

No. 10-0312

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Sep 28, 2010
LEONARD GREEN, Clerk

In re: WHIRLPOOL CORPORATION,)
) O R D E R
Petitioner.)

Before: MERRITT, MARTIN, and COOK, Circuit Judges.

Whirlpool Corporation, under Fed. R. Civ. P. 23(f), moves for permission to appeal a district court's order granting class certification. The class plaintiffs are current residents of Ohio who purchased a Whirlpool front-loading washing machine for personal use. Whirlpool asserts that interlocutory review is warranted because the appeal would raise an important, unsettled issue concerning class certification. What is the standard a district court must apply to factual disputes relevant in determining whether the plaintiff class satisfied the criteria for certification in Federal Rule of Civil Procedure 23? The class plaintiffs oppose the motion to appeal.

Rule 23(f) permits an appeal from an order denying class-action certification. We see no reason it does not grant the same authority when a grant of class-action certification has occurred. In determining our authority we consider: (1) whether the petitioner is likely to succeed on appeal under a deferential abuse-of-discretion standard; (2) whether the costs of continuing the litigation for either the plaintiff or the defendant presents such a barrier that subsequent review is hampered; (3) whether the case presents a novel or unsettled question of law; and (4) the procedural posture of the case before the district court. *In re Delta Air Lines*, 310 F.3d 953, 960 (6th Cir. 2002).

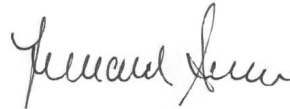
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Whirlpool raises a question of law that is unsettled in this circuit, thus the panel hearing the merits may determine if the granting of class certification was appropriate or grant such other relief as it believes is appropriate.

The motion is GRANTED.

ENTERED BY ORDER OF THE COURT

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Clerk